COUNCIL AGENDA: 04-28-09
ITEM: 3.7

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 04-23-09

SUBJECT: AUDIT OF THE CITY OF SAN JOSÉ'S WORKERS' COMPENSATION PROGRAM.

RECOMMENDATION

As referred by the Public Safety, Finance and Strategic Support Committee on April 16, 2009 and outlined in the attached memo previously submitted to the Public Safety, Finance and Strategic Support Committee, accept the report on the audit of the City of San José's Workers' Compensation Program.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

AUDIT OF THE CITY OF SAN JOSÉ'S WORKERS' COMPENSATION PROGRAM

In Spite of Improvements, the Cost of the City's Workers' Compensation Program is Higher Than Comparable California Cities and Counties

Report 09-03
April 2009

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
Sharon W. Erickson, City Auditor

April 8, 2009

Honorable Mayor and Members
of the City Council
200 East Santa Clara Street
San Jose, CA 95113

Transmitted herewith is the report *An Audit of the City of San Jose's Workers' Compensation Program.* This report is in accordance with City Charter Section 805. An Executive Summary is presented on the blue pages in the front of this report. The City Administration's response is shown on the yellow pages before Appendix A.

This report will be presented at the April 16, 2009 meeting of the *Public Safety, Finance & Strategic Support Committee*. If you need any additional information, please let me know. The City Auditor's staff members who participated in the preparation of this report are Steven Hendrickson and Robin Opheim.

Respectfully submitted,

Sharon W. Erickson
City Auditor

finaltr
SE:bh

cc: Mark Danaj, Debra Figone, Christine Shippey, Deanna Santana, John Dam, David Wong, Rick Doyle, Bill Clark, Rob Davis, Darryl Von Raesfeld, Elena Backman, David Oki, Allen Demers

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

AUDIT OF THE CITY OF SAN JOSÉ'S WORKERS' COMPENSATION PROGRAM

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Executive Summary

In accordance with the City Auditor's 2008-09 Audit Workplan, we have completed an audit of the City of San José's Workers' Compensation Program. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. We limited our work to those areas specified in the Objectives, Scope, and Methodology section of this report.

The City Auditor's Office thanks the management and staff of the Human Resources Department, Risk Management Division, the City Attorney's Office, the City Manager's Budget Office, and the Finance Department for their time, information, insight, and cooperation during the audit.

Finding I In Spite of Improvements, the Cost of the City's Workers' Compensation Program is Higher Than Comparable California Cities and Counties

In spite of making a series of reforms over the past four years, such as establishing guidelines for the types and cost of treatments to be provided to injured workers and requiring that the City pre-approve certain high cost medical treatments, the City operates an expensive Workers' Compensation Program. For every year between 2003 and 2007, for example, the cost of San José's workers' compensation claims was higher than those of comparable California cities and counties.

Over the last five years, although the number of claims has decreased overall and the City has reduced its total cost for the medical treatment of injured workers, workers' compensation claims costs are high and have recently increased. The City has made a concerted effort, especially since 2004, to improve its Workers' Compensation Program. The City added staff to its Workers' Compensation Unit, and the City implemented most of the recommendations for program improvements made by an outside consultant in 2004 and 2007. Also, the consultant indicated the City maintains a highly evolved safety program, has re-established the Return-To-Work Coordinator position, and has an updated database that enables Risk Management to track the cost and cause of each claim. In fact, for specific activities that we reviewed in detail, we confirmed the timely

delivery of services by the City's workers' compensation claims adjusters. Nonetheless, the overall cost of the City's Workers' Compensation Program, which includes the cost for medical treatment and the cost of payments to temporarily disabled workers who are off work, increased this past year (fiscal year 2007-08) to $24.3 million after three straight years of decline. The City also experiences a large number of multiple claims, particularly in the Police and Fire Departments, and statistics show some sworn personnel filing numerous workers' compensation claims just before retiring.

Part of the reason that the City's workers' compensation costs are up is that the total amount of time that injured workers stay off work while recovering from their injuries has increased. The cost of the City's payments to injured workers who are temporarily disabled and off work has increased this past year to $9.0 million after generally declining over three years. The bulk of these payments are to injured police officers and firefighters who in 2007-08 accounted for over 80 percent of the City's disability leave costs, about $7.5 million. In addition, the Fire Department has minimum staffing requirements and incurs overtime costs to back-fill disability leave absences. Although the City has taken steps to moderate the escalation of the City's medical, indemnity, and legal expenses, more action is now needed to moderate the escalating cost of disability leave, particularly in the City's Police and Fire Departments.

One action that the City can take is to revise the financial incentives to stay off work. Another action that the City can take is to more closely monitor the cost of its Workers' Compensation Program, particularly the costs of disability leave. In addition, the high cost of the City's Workers' Compensation Program warrants more comprehensive and frequent reporting on the Program's costs to the City Manager and the City Council. Currently, the City Manager receives an annual report on the City's Workers' Compensation Program. However, we believe that reporting on the Workers' Compensation Program costs should be done more frequently and should highlight the costs of the City departments who contribute most to workers' compensation costs. Furthermore, Workers' Compensation Program costs should be reported to the City Council level. In addition to continually reminding the City Manager and the City Council of the City's workers' compensation costs, each department should also be made directly accountable for all of their own department's costs. To accomplish this, each department should be responsible for a workers' compensation line item in their departments' budgets, as is done in five of nine other cities that we surveyed. Currently, in San José, the departments only pay that part of the workers' compensation cost that is the cost of payments to injured workers while out on disability leave.

Another step that the City can take to contain the cost and frequency of its workers' compensation claims is to make the City's departments directly accountable for meeting their workplace safety goals. Several of the City's departments participate in a comprehensive safety program, in which departments

evaluate their success in maintaining safe work environments in consultation with Risk Management. However, meeting safety goals is not part of the City's annual review of each department's performance, which an outside consultant, ARM Tech, recommended in 2007. We believe that the City should make the departments' evaluation of their safe work environments more visible by including in the annual review of each department's performance an assessment of how well the departments met their goals for maintaining a safe work environment.

RECOMMENDATIONS

We recommend that the City Manager:

Recommendation #1 **Propose structural changes to the City's Workers' Compensation Program that would include (1) reducing the City's policy of providing up to nine months of a disability leave supplement pay at 85 percent for non-sworn and one full year at 100 percent for sworn employees and (2) implementing a retirement benefit payment offset for sworn employees receiving disability retirement payments that replicates the offset for retired non-sworn employees. (Priority 2)**

We recommend that Risk Management:

Recommendation #2 **Assign to the City's Return-To Work-Coordinator the responsibility for identifying for each of the departments, with the highest frequency of workers' compensation claims, the number of lost work hours attributable to employees off work due to a workplace injury. Each month, this report shall be made available to the City Manager and to each department director to facilitate the department directors' efforts to have the injured employees return to work as soon as the workers' medical conditions allow. (Priority 3)**

We also recommend that in the San José Police and Fire Departments:

Recommendation #3 **The Police Chief and the Fire Chief work with Risk Management to identify the reasons for the recent significant increase in the time away from work among their injured police officers and firefighters, so that they may be in a better position to address the escalating cost of disability leave payments in their departments. (Priority 3)**

We recommend that the City Administration and the Fire Department:

Recommendation #4 **Reconsider the feasibility of restoring the Wellness Coordinator position for the Wellness Program and implementing a comprehensive Wellness-Fitness Program for the Fire Department. (Priority 3)**

We recommend that the City Administration:

Recommendation #5 **Implement the 2007 consultant recommendation to include the accomplishment of safety goals as one of the goals to be considered in the City's performance review process in which the City Council reviews each department's performance during the budget study sessions each spring. (Priority 3)**

We recommend that Risk Management and the City Manager's Budget Office:

Recommendation #6 **For the City Departments whose employees file most of the City's workers' compensation claims, establish a line item in each department's operating budget that would cover the department's projected workers' compensation costs. Departments that spend more than they have available in their departmental budget would have to approach the City Council for a budget augmentation. (Priority 3)**

We recommend that Risk Management:

Recommendation #7 **Prepare a quarterly report to the Public Safety, Finance, and Strategic Support Committee that covers the City's Workers' Compensation Program. This report should identify (1) workers' compensation claims costs for each of the City departments who have the highest frequency of workers' compensation claims, (2) total costs compared to the budgeted costs for each department, and (3) significant components of cost (e.g., the cost for medical treatments, payments of temporary disability, payments of disability leave supplements, and/or payments for permanent disabilities). Risk Management should also make this report available to each of the department directors, whose departments account for the bulk of the City's claims, as a way to closely monitor the City's overall and departmental costs of workers' compensation. (Priority 3)**

Introduction

In accordance with the City Auditor's 2008-09 Audit Workplan, we have completed an audit of the City of San José's Workers' Compensation Program. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. We limited our work to those areas specified in the Objectives, Scope, and Methodology section of this report.

The City Auditor's Office thanks the management and staff of the Human Resources Department, Risk Management Division, the City Attorney's Office, the City Manager's Budget Office, and the Finance Department for their time, information, insight, and cooperation during the audit.

Background

History

The State of California first dealt with the problem of uncompensated work injuries in 1911 when the Roseberry Act was adopted. This provided employers a voluntary plan of compensation benefits. In 1913, the Boynton Act superseded the Roseberry Act by making it mandatory for employers to provide compensation. The Workers' Compensation Insurance and Safety Act of 1917, as amended and codified, is the one in force today. Since its enactment, California workers have been entitled to medical treatment and compensation payments for industrial injuries.

Employers within the workers' compensation system must comply with workers' compensation law by either obtaining insurance or, where permitted, insuring themselves. All employers are required to abide by the workers' compensation laws of the State of California and must follow the pronouncements of the Workers' Compensation Appeals Board (WCAB) in rating permanent disability claims and handling disputed claims. The WCAB must approve all permanent disability awards.

There are three options to employers seeking workers' compensation coverage - the State Compensation Insurance Fund, private insurance, and self-insurance. In addition, state and local governmental entities may participate in Public Entity Risk Pools, transferring or pooling (sharing) some portion of risk. The City of San José has chosen to be self-insured.

Self-insurance is also referred to as risk retention. Therefore, in choosing the self-insurance option, the City has assumed the risk for all organizational losses that may occur.

Workers' Compensation Reform

In an effort to be more efficient and cost-effective in providing medical and workers' compensation benefits to injured California workers, the California State Legislature has reformed workers' compensation law several times over the past twenty years. In April 2004, the State of California passed Senate Bill 899 (SB 899). The bill introduced major changes into the law with many new provisions, establishing guidelines for types and costs of treatments, limiting the amounts paid for medical services to reasonable charges listed in an official medical fee schedule, and defining the number of medical treatments necessary to cure injured workers.

Utilization Review

One of the provisions of SB 899 was the requirement for a Utilization Review Process, whereby a physician assesses the necessity of a prescribed treatment for an injured worker. The City contracted with Fair Isaac, now Mitchell International (Mitchell), to conduct utilization review.

The purpose of utilization review is to check whether a requested medical treatment or procedure is appropriate given the injury and the diagnosis. The City has contracted with Mitchell to assess the need for certain medical treatments, such as surgeries, that have been requested by injured workers' physicians. While nurse practitioners may authorize requests for treatment, in accordance with State law, only licensed physicians may modify, delay, or deny requested treatments. In addition, the State may impose penalties for untimely or inappropriately modified, delayed, or denied authorizations for treatment. Denied treatment requests may be appealed. Upon appeal, requested treatment may ultimately be authorized, authorized with modification, or there may be another denial.

Mitchell provides the City with an annual report that shows the number of treatments that utilization review authorized, modified, delayed, or denied. Utilization review denied treatment at a fairly high rate, specifically, 34 percent, 36 percent, and 37 percent in 2004-05, 2005-06, and 2006-07, respectively. According to a Senior Workers' Compensation Claims Adjuster, the primary reason requests for authorization are denied is that the treatment is not medically necessary. Treatments may be deemed not medically necessary because (1) more conservative treatment as recommended by State law has not been tried first, (2) the primary treating physician has not provided enough information or has provided incorrect information on the medical condition, or (3) prior to authorizing surgical

procedures, utilization review physicians recommend diagnostic tests, such as Magnetic Resonance Imaging (MRI), to determine the need for such procedures. Not all requested medical treatments are sent to Mitchell for evaluation and authorization; as described below, the City's workers' compensation claims adjusters may pre-authorize certain procedures and treatments.

Utilization Review Guidelines for Certification by Adjuster

Certain requests for treatment for injured workers do not have to go through the Utilization Review Process. A part of SB 899 reform gives workers' compensation claims adjusters the authority to certify certain treatments rather than send them through the formal process. In June 2007, the State of California Division of Workers' Compensation Acting Administrative Director advised workers' compensation claims adjusters to continue to pre-approve certain requests for treatment, stating *"Ensuring injured workers receive prompt and effective medical care is a top priority…DWC continues to support the establishment of 'UR best practices' that allow claims administrators to approve appropriate levels of care for injured workers at the lowest possible levels within the claims organization, without having to send those requests through the third party process."*

Accordingly, the City's Workers' Compensation Program Administration has developed Utilization Review Guidelines. The City's guidelines allow adjusters to certify:

- Chiropractic and Physical/Occupational Therapy and Acupuncture
- Diagnostics – Magnetic Resonance Imaging (MRI), Radiographs (X-Rays), Ultrasound, Bone Scans, and Electrocardiograms
- Crutches

During our claim file review, we found that these guidelines, granting authority to workers' compensation claims adjusters to certify many requested treatments, combined with the methods workers' compensation claims adjusters use to certify and initiate treatments for injured workers, enabled the City's workers' compensation claims adjusters to comply with State-mandated standards and timeframes for the Utilization Review Process.

Preferred Provider Organizations

Mitchell has negotiated with four Preferred Provider Organizations (PPO) to establish discounted pricing schedules for treatments and medications for injured workers. According to the City's Assistant Risk Manager, having four PPOs available increases the likelihood that injured workers will choose one of the PPOs for treatment.

Reasonable costs for treatments and medications are in accordance with SB 899. Mitchell reviews all PPO billings and if a PPO invoices a higher amount than negotiated, Mitchell's review disallows the portion not in accordance with the schedule. According to the annual cost savings reports Mitchell provides the City, savings on PPO-related treatments and medications were $284,766 in fiscal year 2006-07.

Bill Review

Under its agreement with the City, Mitchell reviews every single bill PPOs or Primary Treatment Providers (PTPs) submit for payment and discounts many of them, only allowing standard amounts to be paid in accordance with SB 899-established treatment schedules and negotiated charges. According to the Workers' Compensation Unit, they send Mitchell all the original bills providers submit for review. After their review, Mitchell returns the original bills with corrected amounts and explanations for their reductions. Workers' Compensation produces the checks and mails the payments and explanations to the providers.

Mitchell summarizes all billing information annually and provides a report to Workers' Compensation. For example, the annual report for 2004-05 shows that Mitchell reviewed 32,814 bills providers submitted for payment, including hospital inpatient and outpatient treatments, pharmaceuticals, supplies, treatments provided by the workers' primary treatment providers, and other medical expenses. Billed charges during 2004-05 on the 32,814 bills reviewed were $19.9 million. Mitchell's review disallowed charges of about $11.5 million, primarily fees in excess of State guidelines and also including about $2.6 million in duplicate billings.

Exhibit 1 below shows the number of medical bills Mitchell reviewed, the amounts billed and allowed, the significant amounts that were disallowed, and the review fees the City paid Mitchell in 2004-05, 2005-06, and 2006-07.

Exhibit 1: Billed and Allowed Medical Fees FY 2004-05 through 2006-07

	Bills Reviewed	Billed Charges	Allowed Charges	Disallowed Amounts	Review Fees	Percentage Disallowed
2004-05	32,814	$19,858,350.54	$8,327,558.94	$11,530,791.60	$217,714.36	58.1%
2005-06	30,398	21,056,896.41	7,851,030.57	13,205,865.84	255,052.55	62.7%
2006-07	29,005	16,825,431.64	6,958,611.48	9,866,820.16	227,060.78	58.6%

Significant cost savings are due to SB 899 which contains standard fee schedules that limit the payment amounts for medications and medical treatments and procedures and also limit the number of treatments allowed.

As already stated above, Mitchell provides an explanation for the reduced cost with each bill that is not paid in full. For example, one detailed 'high-cost' bill showed hospital charges of about $125,200 and Mitchell disallowed over $79,000 so the City's final cost was about $46,000. We inquired why the hospital would overcharge even though probably aware of the SB 899 fee limits. According to the City's Assistant Risk Manager, these billings are similar to how medical insurers prepare their bills, showing the full amount that would have been paid before the negotiated adjustment. He also discussed the fact that providers may want to show full charges before adjustments for financial statement purposes.

Types of Workers' Compensation Claims

The Workers' Compensation Unit classifies claims into three categories. These are:

1. *Information Only Claims:* Information Only claims are filed to document an injury or illness when an employee does not plan to seek medical attention. The purpose of filing a claim is to document the incident in case disease or injury develops at a later date that could be related. Neither the City nor the employee incurs any cost and no reserve amount is required.

2. *Medical Only Claims:* Medical Only claims are filed for work-related injuries or illnesses for which lost time does not exceed three days; the City as the employer pays all costs of medical treatment. The City's Workers' Compensation Unit automatically assigns a beginning reserve amount of $2,000 to all medical only claims.

3. *Indemnity Claims:* Indemnity claims are filed for a work-related injury or illness which normally results in loss of time from work. The employee is compensated for lost time and all medical costs of

the injury or illness. The two major types of indemnity claims are Temporary Disability (TD) and Permanent Disability (PD).

The Four Major Benefits

The California Workers' Compensation Act provides for four major benefits to injured workers. These are:

1. *Medical Care:* The injured employee is eligible for all reasonable medical care necessary to cure or treat an injury. When SB 899 passed in April 2004, both the costs of medical treatments and the number of visits necessary to treat or cure injuries were limited.

2. *Temporary Disability (TD):* The injured worker is also entitled to a TD benefit, which is the wage loss benefit payable during medical practitioner-authorized absence from work. As of January 1, 2009, current workers' compensation law provides for a maximum of about $958 per week for TD, calculated at two-thirds of weekly earnings. As most City employees have salaries higher than $958 per week, the majority receive the maximum TD amount. Prior to the passage of SB 899, injured workers received TD payments for up to 240 weeks (over four and a half years) within a period of five years from the date of injury. With the April 2004 reform, workers injured between April 19, 2004 and January 1, 2008 receive payments for up to two years (104 weeks) from the date of the first payment made for most injuries. Those injured on or after January 1, 2008 are eligible to receive 104 weeks of TD payments within a five-year period, counted from the date of injury. Payments for a few long-term injuries, such as severe burns or chronic lung disease, can go longer than 104 weeks. TD payments for these injuries can continue for up to 240 weeks of payment within a five-year period. The City-negotiated Memoranda of Agreement provide additional compensation in the form of a Disability Leave Supplement (DLS) when employees are on TD. Sworn personnel are entitled to TD and the DLS to equal 100 percent of their salaries for one year. Non-sworn personnel receive TD plus the DLS to equal 85 percent of their salaries for nine months. TD and DLS are paid out of departments' personal services budgets.[1]

[1] TD payments are paid directly from the General Fund for (1) part-time workers who are not eligible for the DLS and (2) full-time workers who have expended their entire DLS benefit but are still disabled and entitled to TD payments.

3. *Permanent Disability (PD):* The injured worker may also be entitled to a PD benefit, which is a benefit predicated on the reduction of the worker's diminished future earnings capacity. The State of California's *Schedule for Rating Permanent Disabilities* rates a disability based on ability to compete for employment and other factors, such as the claimant's age, occupation, and extent of injury. Most kinds of compensation available in workers' compensation systems are attempts to compensate for loss of either earnings or earning capacity and are usually paid or accrued weekly. PD payments range from $70 to $270 per week and are based on percentages listed in the rating schedule.

4. *Death Benefit:* Death benefits in workers' compensation claims include burial expenses and support for the deceased employees' dependent survivors. In addition, any payments for either temporary or total disability due and unpaid at the time of death are paid to the dependents. Adjusters establish a reserve amount for future payments of the death benefit.

The Workers' Compensation Unit

The Workers' Compensation Unit is part of the Risk Management Division (Risk Management) in the Department of Human Resources. Risk Management's purpose is

> *"To actively manage the City's human and capital assets in a way that eliminates or at least minimizes liability and loss and maximizes opportunities."*

The main objective of the Workers' Compensation Unit is to ensure injured employees receive adequate and appropriate treatment through an effective claims management process. This may include medical treatment as well as rehabilitation.

Computerized Claims Management

In 1991, Risk Management acquired a claims data management system that aids the workers' compensation claims adjusters in managing their caseloads. The stand-alone, computerized David System, designed by the David Corporation, with Release 5.1 of CompPlus software, came online in July 1991. The system tracks the status of claims, produces management reports, and generates workers' compensation payments. In January 2008, CompPlus was upgraded to Renaissance, a Windows-based system. Which, according to the City's Assistant Risk Manager:

- enhanced claims management functions;
- streamlined the claims payment process;

- facilitated Electronic Data Interchange in accordance with State-mandated reporting requirements; and
- allowed online reporting of injuries.

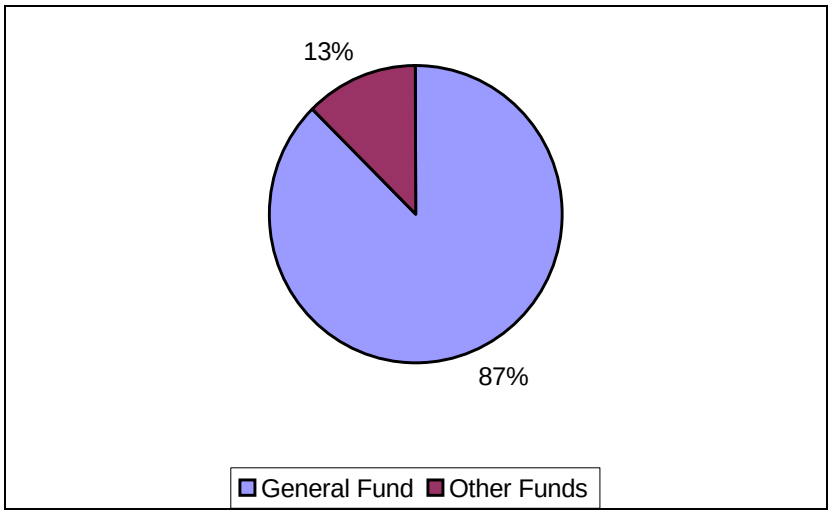
Department Budget

The Workers' Compensation Unit is budgeted for a staff of 25.34 full-time equivalent employees (FTEs). The Workers' Compensation Program, along with the Return-to-Work Program, Risk Financing, Safety and Loss Control, and Employee Health Services, are the key operational services within the Health and Safety Core Service the Department of Human Resources provides. The adopted 2008-09 budget for the Administration of the Workers' Compensation Unit is $2.73 million. This is about 3 percent more than the 2007-08 adopted budget which was $2.66 million.

In addition, the City Attorney's Office has a Workers' Compensation Unit with four attorneys and administrative staff that provide legal advice, investigations, and litigation services, as well as provide training to Workers' Compensation staff to review changes in the law that impact claims processing. This unit is part of the City Attorney's Legal Representation Core Service and is budgeted for 6.1 FTEs. The 2008-09 adopted budget of about $978,300 is 1 percent less than the 2007-08 adopted budget of approximately $987,200.

Most workers' compensation costs are paid from the City's General Fund. As shown in Exhibit 2, in FY 2007-08, 87 percent of workers' compensation costs were paid from the City's General Fund; 13 percent were paid from other funds.

Exhibit 2: FY 2007-08 Workers' Compensation Cost by Fund



Source: Risk Management.

Claims Investigation

Workers' compensation claims adjusters periodically identify workers' compensation claims that may require investigation. The City Attorney's Office (CAO) Workers' Compensation Unit has contracted with three private investigators to conduct investigations to determine whether the reported injury or illness occurred while an employee was acting within the course of his or her employment. According to the CAO Workers' Compensation Unit, workers' compensation claims adjusters referred 15 such claims for investigation during 2007-08. All 15 claims were investigated. According to a Supervising Deputy City Attorney, in nearly half the cases it was determined that the injury or illness did not occur at work and workers' compensation claims adjusters denied these claims.

When workers' compensation claims adjusters suspect cases of fraud or abuse, Risk Management confers with the CAO Workers' Compensation Unit whether an investigation is necessary. If they are in agreement, Risk Management employs a private investigator to perform surveillance or subrosa work on a case by case basis. The cost of the investigation is assigned to the claim file. In the last two years, Risk Management assigned four cases for investigation for fraud but none was identified.

Previous Workers' Compensation Studies

The City Auditor's Office has conducted several performance audits of the City's Workers' Compensation Program including:

- January 1994 *Audit Of The Workers' Compensation Claims Database*
- August 1994 *Audit Of The Workers' Compensation Program*
- December 2005 *Audit Of The Workers' Compensation Claims Liability*

Those reviews included a total of 50 recommendations. All 50 recommendations made in these three performance audits have subsequently been resolved and closed.

In addition, the City's Risk Management Division contracted with ARM Tech, an actuarial, risk management, and claims consultant to perform two audits – a *Workers' Compensation Claims Audit* which was issued in September 2004 and a *Risk Management Assessment Audit*, issued in March 2007. The main recommendations in the 2004 claims audit were to (1) add up to seven new claims adjusters to reduce caseloads of over 300 claims per adjuster to conform more closely to the State-recommended caseload of 175 claims and (2) eliminate the caseloads the two Senior Workers' Compensation Claims Adjusters manage in order to concentrate

their efforts on supervising and training the workers' compensation claims adjusters they supervise. By January 2008, the Workers' Compensation Unit had implemented both of these recommendations.

The March 2007 ARM Tech *Risk Management Assessment Audit* was the basis of the department's current reorganization efforts. Six recommendations, shown in Exhibit 3, were made.

Exhibit 3: Status of 2007 ARM Tech Recommendations

Recommendation	Status	Explanation
Centralize the Risk Management function.	Partly implemented.	Risk Financing (Insurance) has moved from the Finance Department to Human Resources where the Risk Management function is located. The General Services Administration Safety Officer reports directly to Risk Management. Other Safety Officers report to their own department heads but there is a dotted-line reporting structure in place for these department Safety Officers to also report to Risk Management. The City Attorney's Office continues to independently litigate and settle workers' compensation claims.
Place the Risk Management function in the Human Resources Department.	Implemented.	The Risk Management function is located in the Human Resources Department.
Hire a full-time Risk Manager.	Partly implemented.	A Human Resources Deputy Director, certified in Risk Management, has assumed this function and is performing it in conjunction with his other duties.
Immediately add eight workers' compensation claim examiners; it may be possible to add as few as five examiners.	Implemented.	Human Resources requested budget for additional examiners and was allowed to hire five new examiners. All new examiners started work as of January 2008.
Add two full-time risk control employees.	Implemented.	Two vacant risk control positions have been filled. Specifically, a Citywide Safety Officer and a Risk Management Analyst have been hired.
Use two accountability methods for controlling risk costs: performance objectives related to safety goals, against which actual results are measured in the performance review process and risk cost allocation formulas that charge the business unit based at least partially on its loss experience.	Partly implemented.	The Human Resources Department entered into discussions with the Budget Office in FY 2007-08 to develop a method to allocate workers' compensation costs to individual departments. Tying Workers' Compensation Program results to departments' performance evaluations has not been implemented.

Source: Risk Management.

Risk Management Planning Board

In addition, to ensure the long-term success of Risk Management under the reorganized structure, the City Manager established the Risk Management Planning Board (RMPB). The Assistant City Manager chairs the RMPB; permanent members include representatives from Human Resources, Finance, and the City Attorney's Office. Rotating members include representatives from the Police, Fire, Environmental Services, Airport, and Transportation Departments. The RMPB has developed a risk management policy to provide direction to the Risk Management Program. Further, City Administration has selected a risk management consulting firm to assist with analyzing the City's risk financing structure, assist with loss control services, and run a pilot program in one City department to assess its culture of risk and determine the factors contributing to the high frequency of workers' compensation claims City employees file. A report on pilot program results is expected to be published in June 2009.

Objectives, Scope, and Methodology

The purpose of this review was to assess the impact of State reforms and local cost containment efforts. The scope of our audit included all Workers' Compensation Program claims activities through 2007-08. To achieve our audit objectives we:

- Interviewed Risk Management staff;
- Interviewed departmental safety officers and safety liaisons;
- Attended Citywide and departmental safety meetings;
- Reviewed departments' Illness and Injury Prevention Programs;
- Interviewed City Attorney staff;
- Reviewed studies outside consultants performed on claims management and risk management assessment;
- Attended training sessions regarding the Workers' Compensation Claims Management System upgrade;
- Reviewed Risk Management reorganization and annual risk management assessment reports;
- Surveyed other jurisdictions;
- Reviewed the City's and other jurisdictions' annual reports to the State Department of Industrial Relations;
- Met with the City Manager's Budget Office;
- Reviewed Workers' Compensation laws;

- Obtained and reviewed Memoranda of Agreement;
- Judgmentally selected and analyzed a sample of workers' compensation claims;
- Obtained and reviewed payroll reports from the Finance Department;
- Analyzed workers' compensation benchmarking statistics;
- Reviewed workers' compensation claims adjusters' training records;
- Observed the payment process and new claims input into the claims management database;
- Obtained and analyzed claims data reports from the Workers' Compensation Claims Management System; and
- Reviewed performance reports the City's outside contractor for utilization and billing review provided.

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Finding I In Spite of Improvements, the Cost of the City's Workers' Compensation Program is Higher Than Comparable California Cities and Counties

In spite of making a series of reforms over the past four years, such as establishing guidelines for the types and cost of treatments to be provided to injured workers and requiring that the City pre-approve certain high cost medical treatments, the City operates an expensive Workers' Compensation Program. For every year between 2003 and 2007, for example, the cost of San José's workers' compensation claims was higher than those of comparable California cities and counties.

Over the last five years, although the number of claims has decreased overall and the City has reduced its total cost for the medical treatment of injured workers, workers' compensation claims costs are high and have recently increased. The City has made a concerted effort, especially since 2004, to improve its Workers' Compensation Program. The City added staff to its Workers' Compensation Unit, and the City implemented most of the recommendations for program improvements made by an outside consultant in 2004 and 2007. Also, the consultant indicated the City maintains a highly evolved safety program, has re-established the Return-To-Work Coordinator position, and has an updated database that enables Risk Management to track the cost and cause of each claim. In fact, for specific activities that we reviewed in detail, we confirmed the timely delivery of services by the City's workers' compensation claims adjusters. Nonetheless, the overall cost of the City's Workers' Compensation Program, which includes the cost for medical treatment and the cost of payments to temporarily disabled workers who are off work, increased this past year (fiscal year 2007-08) to $24.3 million after three straight years of decline. The City also experiences a large number of multiple claims, particularly in the Police and Fire Departments, and statistics show some sworn personnel filing numerous workers' compensation claims just before retiring.

Part of the reason that the City's workers' compensation costs are up is that the total amount of time that injured workers stay off work while recovering from their injuries has increased. The cost of the City's payments to injured workers who are temporarily disabled and off work has increased this past year to $9.0 million after generally declining over three years. The bulk of these payments are to injured police officers and firefighters who in 2007-08 accounted for over 80 percent of the City's disability leave costs, about $7.5 million. In addition, the Fire Department has minimum staffing

requirements and incurs overtime costs to back-fill disability leave absences. Although the City has taken steps to moderate the escalation of the City's medical, indemnity, and legal expenses, more action is now needed to moderate the escalating cost of disability leave, particularly in the City's Police and Fire Departments.

One action that the City can take is to revise the financial incentives to stay off work. Another action that the City can take is to more closely monitor the cost of its Workers' Compensation Program, particularly the costs of disability leave. In addition, the high cost of the City's Workers' Compensation Program warrants more comprehensive and frequent reporting on the Program's costs to the City Manager and the City Council. Currently, the City Manager receives an annual report on the City's Workers' Compensation Program. However, we believe that reporting on the Workers' Compensation Program costs should be done more frequently and should highlight the costs of the City departments who contribute most to workers' compensation costs. Furthermore, Workers' Compensation Program costs should be reported to the City Council level. In addition to continually reminding the City Manager and the City Council of the City's workers' compensation costs, each department should also be made directly accountable for all of their own department's costs. To accomplish this, each department should be responsible for a workers' compensation line item in their departments' budgets, as is done in five of nine other cities that we surveyed. Currently, in San José, the departments only pay that part of the workers' compensation cost that is the cost of payments to injured workers while out on disability leave.

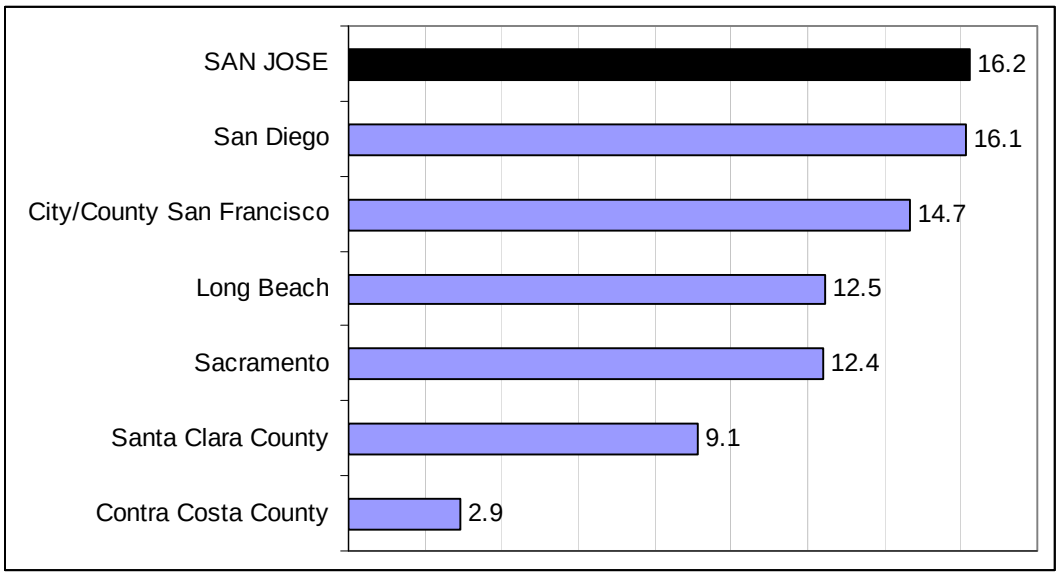
Another step that the City can take to contain the cost and frequency of its workers' compensation claims is to make the City's departments directly accountable for meeting their workplace safety goals. Several of the City's departments participate in a comprehensive safety program, in which departments evaluate their success in maintaining safe work environments in consultation with Risk Management. However, meeting safety goals is not part of the City's annual review of each department's performance, which an outside consultant, ARM Tech, recommended in 2007. We believe that the City should make the departments' evaluation of their safe work environments more visible by including in the annual review of each department's performance an assessment of how well the departments met their goals for maintaining a safe work environment.

The Number of Claims and Their Cost is Higher than Other Comparable Cities and Counties

Statistics from the California Institute for Public Risk Analysis (CIPRA) demonstrate that, in several categories, San José's employees have a higher use of the City's Workers' Compensation Program than employees in other comparable cities and counties. These statistics are based on the annual workers' compensation reports that public employers file with the State of California's Department of Industrial Relations, and showed that the cost of San José's Workers' Compensation Program is higher than comparable California cities' and counties' program costs. In Exhibits 4 through 7, we compare San José's claim frequency and costs to other cities and counties who, like San José, are self-insured and self-administer their workers' compensation claims.

Exhibit 4 compares the San José incident rate per 100 employees with comparable cities and counties in California. As the exhibit shows, San José's incident rate of 16.2 incidents, or claims, per 100 employees is higher than California's comparable cities and counties.

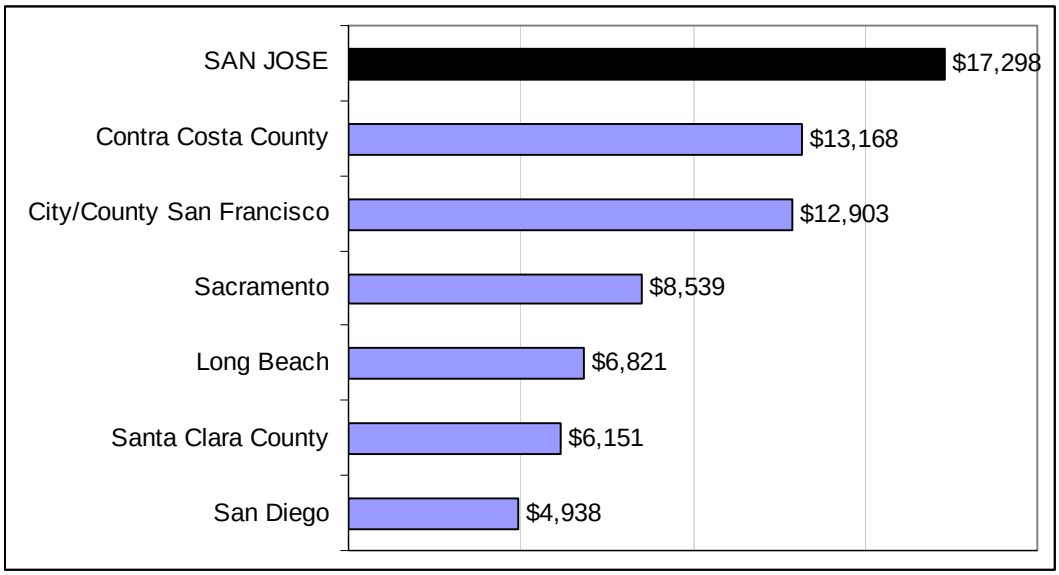
Exhibit 4: Incident Rate per 100 Employees - 7/1/04 through 6/30/07



Source: California Institute for Public Risk Analysis.

Similarly, Exhibit 5 shows that the average incurred cost of a claim in San José between 2004-05 and 2007-08, at $17,298 per claim, was noticeably higher than other surveyed cities and counties. Incurred losses equal the amount paid on a claim to date for both medical and indemnity costs plus reserves for future claim payments for those costs.

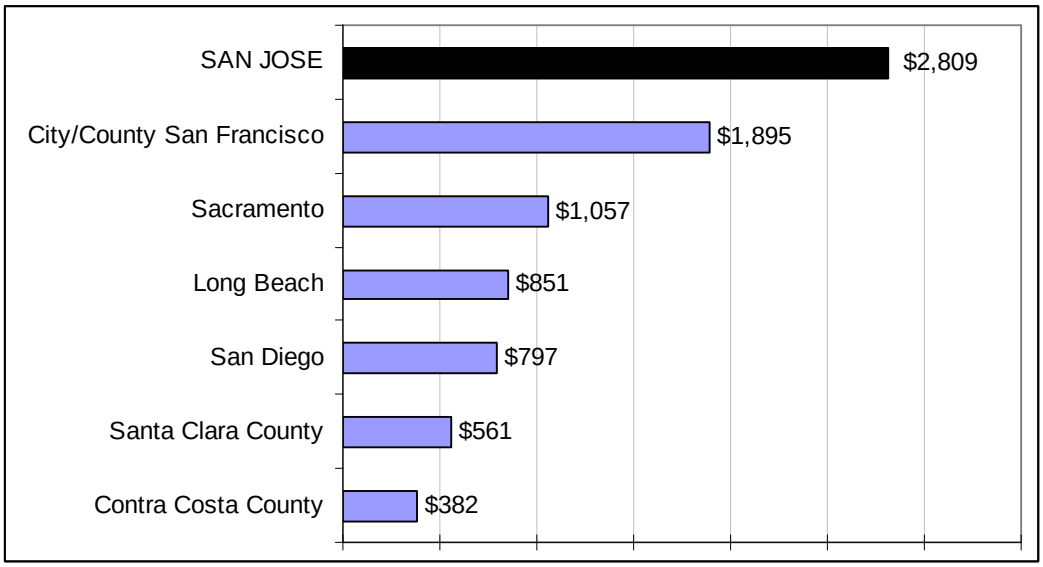
Exhibit 5: Average Incurred Cost per Claim – 7/1/04 through 6/30/07



Source: California Institute for Public Risk Analysis.

Exhibit 6 compares San José's loss rate per employee for a three-year period. The 3-Year Loss Rate per Employee equals three years' worth of incurred losses divided by the three-year total number of employees.

Exhibit 6: Comparison of 3-Year Loss Rate per Employee - 7/1/04 through 6/30/07

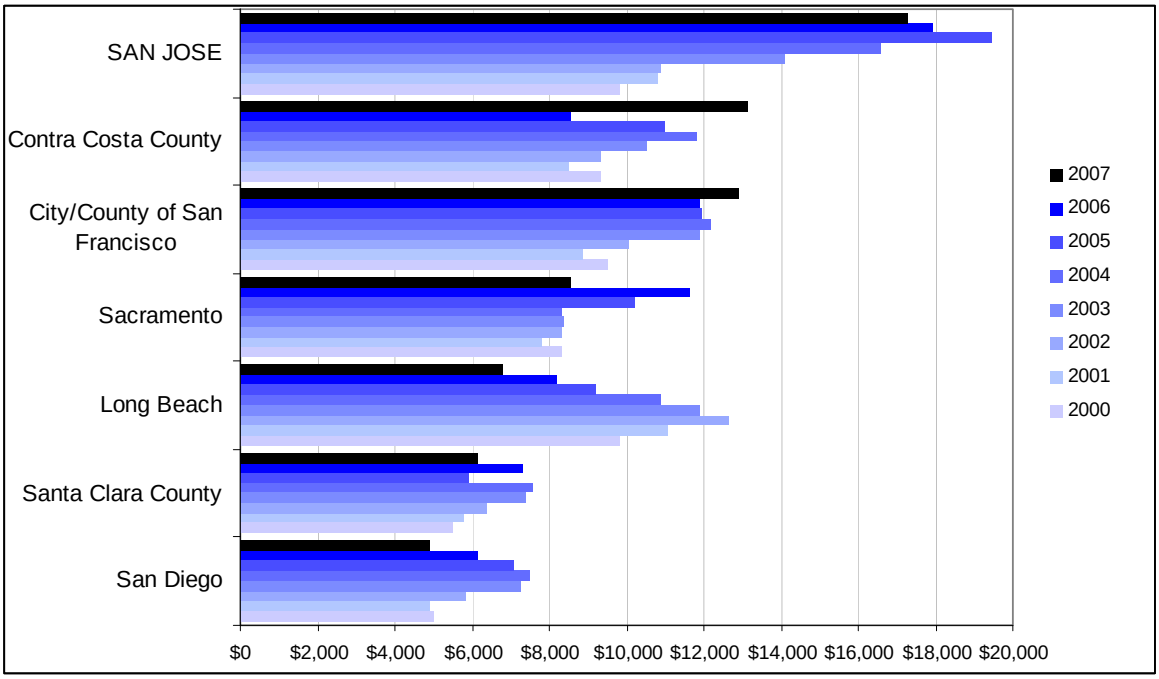


Source: California Institute for Public Risk Analysis.

As the three exhibits demonstrate, San José was the highest in incident rate per employee, average cost per claim, and loss rate per employee when compared to other self-insured, self-administered California jurisdictions we surveyed.

We also used the CIPRA database information to compare San José's average claim costs to these other California jurisdictions from 2000 to 2007. Exhibit 7 below shows the analysis.

Exhibit 7: Average Claims Cost Among Surveyed Cities and Counties Who Are Self-Insured and Self-Administered



Source: California Institute for Public Risk Analysis based on 3-Year averages.

As the graph above demonstrates, San José has had the highest average cost per claim since 2003 when compared to other jurisdictions. This has occurred despite the cost savings the City has realized through the 2004 reform of California's workers' compensation law.

The City Has Taken a Series of Actions to Contain the Cost of the Program

As described in the Background section of this report, the City has instituted a series of reforms aimed at curbing the high cost of its Workers' Compensation Program. To a great degree, the City's cost-cutting efforts came in response to the passage of SB 899 by the California Legislature in April 2004. SB 899 established guidelines for types and costs of treatments to be provided to injured workers. These guidelines, which the City now adheres to, limit the amounts paid for medical services to reasonable

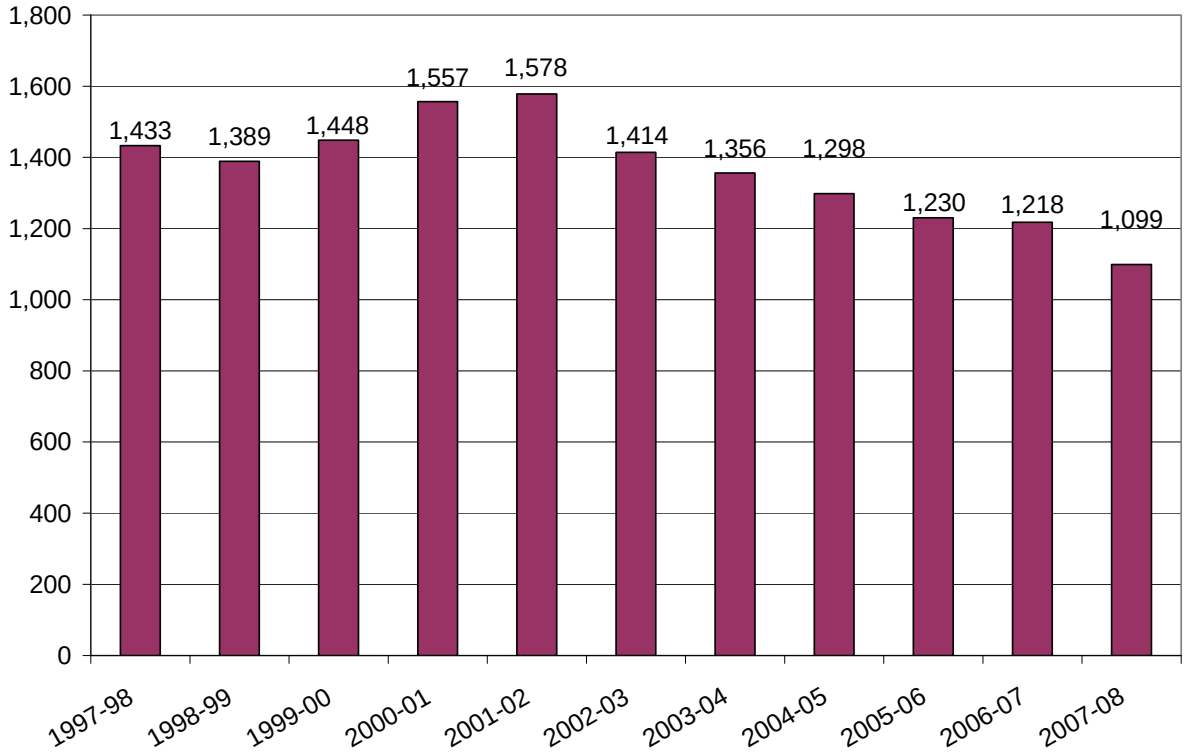
amounts in official medical fee schedules and define the number of medical treatments necessary to cure the injured worker. Also, a contractor has negotiated on the City's behalf a discounted schedule of rates with several Preferred Provider Organizations (PPOs) who provide treatment according to agreed-upon guidelines. Moreover, the PPOs have agreed to abide by the City's rules for having the City authorize in advance certain higher cost treatments. In addition, in accordance with SB 899, the City has established a Utilization Review Process, whereby a nurse practitioner or physician assesses the necessity of a prescribed treatment for an injured worker. Furthermore, the City contracted with Fair Isaac, now Mitchell International (Mitchell), to review the bills that medical providers submit to the City for treatment that has been provided to injured workers.

However, another area that the City needs to study further is identifying the factors that contribute to the high number of workers' compensation claims among San José employees. And, in fact, in September 2008, the City of San José's Human Resources Department initiated a project in which a consultant specializing in serving municipal governments has been called in to assist the City in identifying factors among City employees that contribute to the high frequency of workers' compensation claims. The Human Resources Department plans to have this consultant do a pilot study in one City department to identify the factors or reasons that claims are filed. In our opinion, this is a step in the right direction to address the causes for the City's high frequency of claims and the resultant high cost of its Workers' Compensation Program.

Although the Number of Claims Filed and Claims Costs Have Decreased, the City Still Operates a High Cost Workers' Compensation Program

As Exhibit 8 below shows, the number of new claims filed has decreased over the past six years, declining from 1,578 claims reported in 2001-02 to 1,099 claims reported in 2007-08.

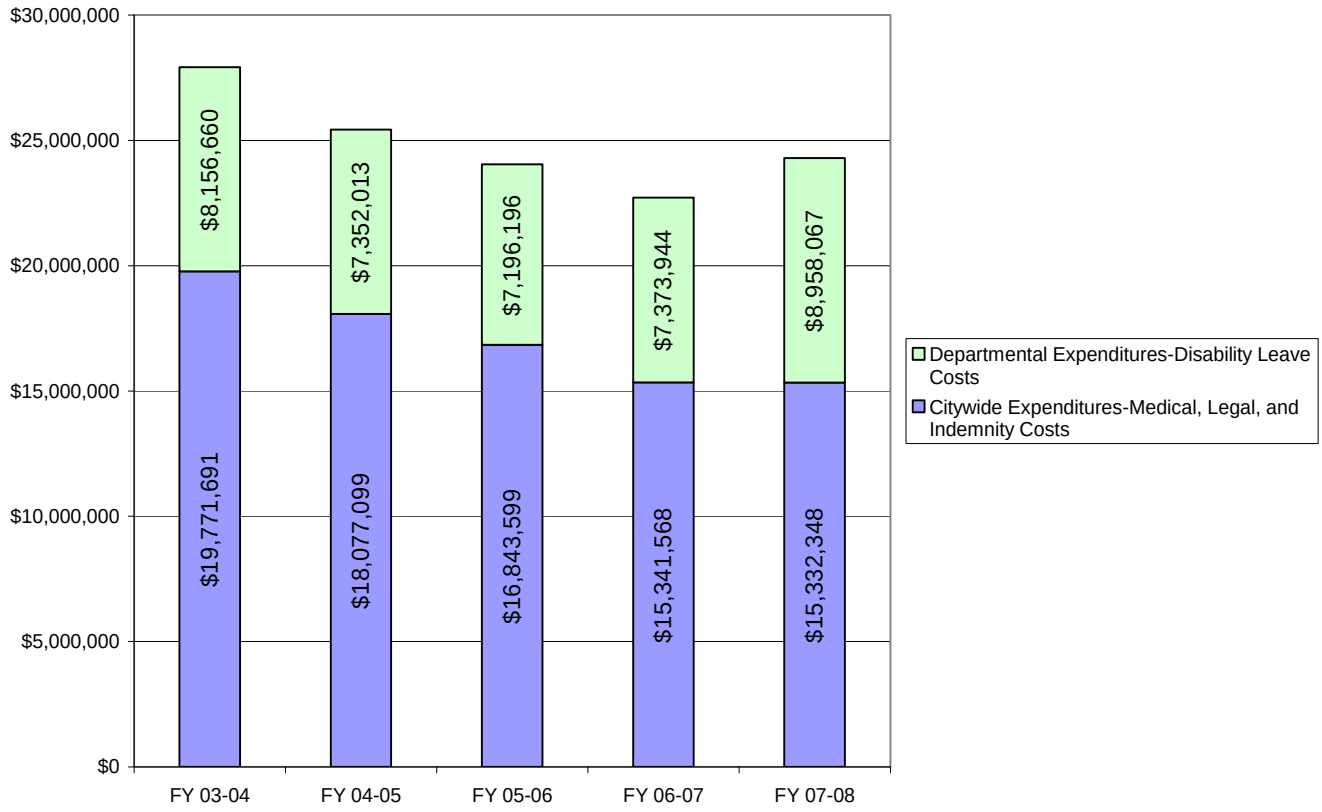
Exhibit 8: New San José Claims Reported in Each FY 1997-98 through 2007-08



Source: California Institute for Public Risk Analysis.

And, as Exhibit 9 below shows, the City's payments for medical, indemnity, and legal costs of claims have also decreased from $19.8 million in 2003-04 to $15.3 million in 2007-08. However, even though the number of new claims reported in each year is down, and medical and indemnity costs have been reduced, the cost of disability leave has increased. As a result, after three straight years of decline, the overall cost of the City's Workers' Compensation Program increased to $24.3 million in 2007-08.

Exhibit 9: Citywide and Departmental Workers' Compensation Program Costs FY 2003-04 through 2007-08

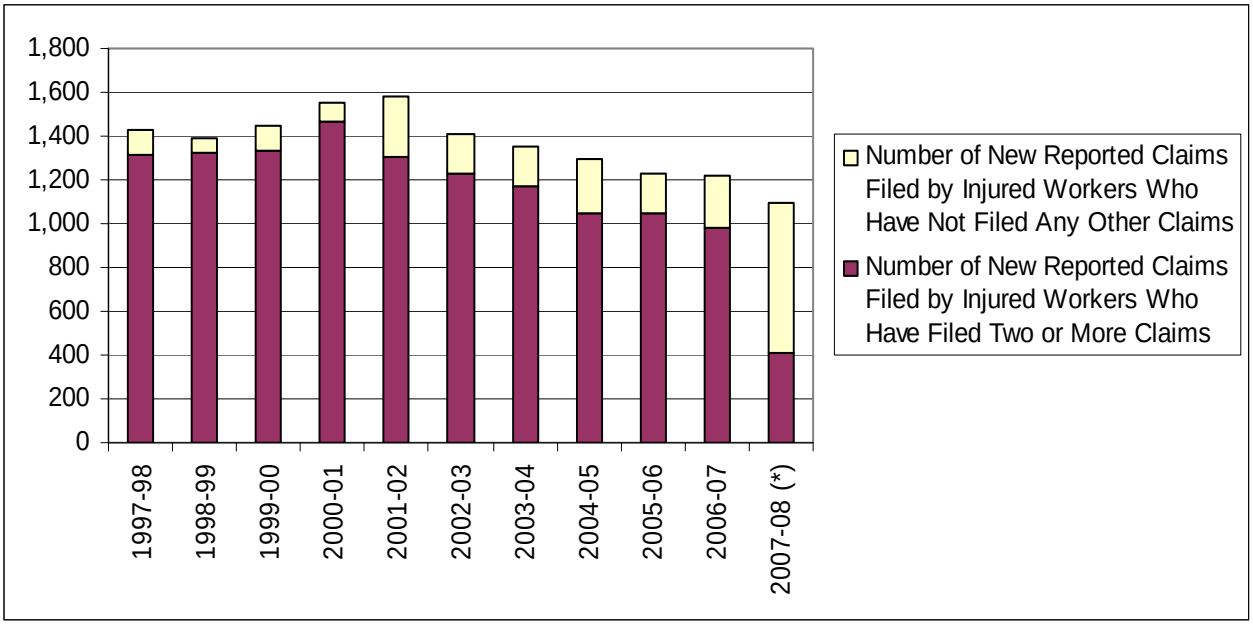


Source: Financial Management System (FMS) and PeopleSoft Payroll System.

Many Injured Workers File Multiple Claims

As shown in Exhibit 4 on page 17 of this report, San José's incident rate of 16.2 incidents, or claims, per 100 employees is the highest among California's comparable cities and counties. One factor that may help explain the City's comparably high use of the program when gauged against other jurisdictions is that a number of City employees file multiple claims over the course of their careers. As shown in Exhibit 10, most workers' compensation claims filed were by City employees who filed multiple claims.

Exhibit 10: Number of New Reported Claims Filed by Injured Workers Who Have Not Filed Any Other Claims Compared to the Number Filed by Injured Workers Who Have Filed Two or More Claims



Source: California Institute for Public Risk Analysis (CIPRA) Benchmarking Database and Workers' Compensation Claims Management Database.

And, upon closer examination, the greatest proportions of multiple claim filers in the City are located in the Police and Fire Departments. Specifically, our review of a workers' compensation database report of multiple claims filers showed that the majority of injured workers with multiple claims were either police officers or firefighters.

Exhibit 11 below shows, for the City departments who are the highest users of the program, the number of multiple claims filed between 1970 and 2008.

* The proportion of workers filing multiple claims can be expected to increase in future years as injured workers file additional claims.

Exhibit 11: Multiple Claim Filing for Selected Departments 1970 through 2008

Department	Multiple Claims Filed	Percentage Of Total Multiple Claims Filed
Police	12,864	42%
Fire	8,770	29%
Transportation	2,664	9%
Environmental Services	1,510	5%
General Services	1,401	5%
Parks, Recreation and Neighborhood Services	1,392	5%
Airport	1,028	3%
Convention, Arts, and Entertainment	521	2%
Public Works	323	1%
Total	**30,473**	**100%**[2]

Source: Workers' Compensation Claims Management Database.

As the exhibit above shows, between 1970 and 2008, nearly 30,500 claims were filed by injured workers who had already filed one or more claims. The exhibit also demonstrates that the highest incidence of multiple claims being filed was in the Police and Fire Departments. Specifically, Police and Fire filed 42 percent and 29 percent, respectively, of the total multiple claims.

We also analyzed the average number of multiple claims individuals in each of the highest-use departments filed and the maximum number of claims one worker in each department filed to date during the same time period. Exhibit 12 below presents our results.

[2] Slightly off due to rounding.

Exhibit 12: Average Number of Multiple Claims by Department 1970 through 2008

Department	Average Number Of Claims Filed By Injured Workers Who Had Already Filed One Or More Claims	Maximum Number Of Claims Filed By One Worker
Fire	5.3	32
Environmental Services	4.5	36
Police	4.4	42
Transportation	3.8	26
General Services	3.5	21
Airport	3.3	27
Convention, Arts & Entertainment	2.8	20
Parks, Recreation & Neighborhood Services	2.8	14
Public Works	2.6	11

Source: Workers' Compensation Claims Management Database.

Exhibit 12 shows that the Fire Department's injured workers averaged the highest number of claims filed per individual during the course of their employment with the City. The Environmental Services Department had the second highest average number of claims filed. The Police Department was third in average number of multiple claims filed.

Just Before Retiring, Some Sworn Personnel File Numerous Workers' Compensation Claims

During the audit we learned that some police officers and firefighters who were nearing retirement filed multiple workers' compensation claims in the years leading up to their retirement in order to increase their eligibility for a service-connected disability retirement. To test this assertion, we analyzed for one year all employees who ended their careers with the Police and Fire Departments with service-connected disability retirements. For the fiscal year ended June 30, 2004, we found that all of the Police and Fire employees who retired in that year on service-connected disability did file workers' compensation claims and also that all of these employees filed multiple claims. Exhibit 13 illustrates the results of our analysis.

Exhibit 13: Multiple Claims Police Officers and Firefighters Retiring On Disability Filed Within 5 Years of Retirement

Police	Total Lifetime Claims	2000	2001	2002	2003	2004	% Filed Within 5 Years Of Retirement
Retiree #1	5		1			2	60%
Retiree #2	10		3	1	1		50%
Retiree #3	11	1	1	2	1		45%
Retiree #4	10	1		1	2		40%
Retiree #5	11	1	1		1	1	36%
Retiree #6	6				2		33%
Retiree #7	12		1	2			25%
Fire							
Retiree #1	6			3	2		83%
Retiree #2	9	1			5		67%
Retiree #3	11		1	2	3		55%
Retiree #4	12	1	2		3		50%
Retiree #5	17				8		47%
Retiree #6	7			1	2		43%
Retiree #7	19		1	1	6		42%
Retiree #8	8			1	2		38%
Retiree #9	17		2		4		35%
Retiree #10	9		2	1			33%
Retiree #11	10			2	1		30%
Retiree #12	11		1		2		27%
Retiree #13	26		3	2	1	1	27%
Retiree #14	8				2		25%
Retiree #15	8				2		25%
Retiree #16	18		1		1		11%

Source: Workers' Compensation Claims Management Database.

As Exhibit 13 demonstrates, 21 of 23 retirees with service-connected disability retirements (six of seven police officers and all but one firefighter) filed workers' compensation claims during the two years prior to retiring. In addition, 11 of the 23 retirees (nearly 50 percent) filed many of their workers' compensation claims (40 percent or more) within 5 years of retiring. As for multiple claims, all 23 employees filed more than one claim in the 5 years leading up to their retirement. Our analysis seems to affirm that some sworn employees file workers' compensation claims in the years just prior to retiring to increase their eligibility for a service-connected disability retirement.

The Additional Cost of Disability Retirements

Another factor that may be contributing to the high cost of the City's Workers' Compensation Program is that in San José, unlike other California cities and counties, public safety employees are eligible to collect both their retirement benefit and workers' compensation payments when they retire with a service-connected disability. Other cities and counties reduce the regular pension to the extent that the retiree is also receiving workers' compensation benefits. However, San José's sworn personnel who are disabled when they retire are eligible to receive their full pension in addition to workers' compensation temporary and/or permanent disability payments. Non-sworn San José employees who retire on a service-connected disability do not receive both workers' compensation benefits and their full retirement, but have their retirement offset by the amount of the workers' compensation payments.

According to the 2008 Management Partners report, the City pays $1.7 million each year by not reducing police and fire retirement pension benefits when workers' compensation benefits are paid. The report recommended reducing those benefits as a way to help solve the City's current General Fund deficit. Of course, such a change would have to be negotiated with the unions that represent the police officers and firefighters. During the recently completed negotiations of a new bargaining agreement between the City and the International Association of Firefighters-Local 230, the City unsuccessfully attempted to change the language of the new bargaining agreement so that the City would have started to offset the retirement annuity of retirees by the amount that the retiree had been paid in workers' compensation benefits.

The High Cost of Disability Leave

As stated previously, the City-negotiated Memoranda of Agreement provide additional compensation in the form of a Disability Leave Supplement (DLS) when employees are on temporary disability (TD). Sworn personnel are entitled to TD and the DLS to equal 100 percent of their salaries for one year. Non-sworn personnel receive TD plus the DLS to equal 85 percent of their salaries for nine months.

The City's payments to cover the cost of disability leave – the State-mandated temporary disability payment and the City's DLS benefit – while injured workers are off work has increased by $800,000 over the past five years, from $8.2 million in 2003-04 to $9.0 million in 2007-08. Of even greater concern is the rapid escalation in disability leave costs in the Police and Fire Departments between 2006-07 and 2007-08. In contrast, some other City departments, such as the Departments of Transportation; Public

Works; and Planning, Building, and Code Enforcement have shown marked declines in the cost of disability leave for injured workers who are temporarily disabled and off work.

Significant Increases in Disability Leave Costs in the Police and Fire Departments

The City's total cost of disability leave increased by $800,000 over the past five years. However, disability earnings have decreased in some departments, and these payments increased by $1.6 million during the same time period in the Police and Fire Departments. Exhibit 14 presents disability leave earnings paid for FY 2003-04 through 2007-08.

Exhibit 14: Disability Leave Earnings by Department FY 2003-04 through 2007-08

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Police	$3,152,247.46	$3,107,796.07	$3,019,397.37	$3,508,616.94	$4,021,496.09
Fire	2,719,469.18	2,625,930.76	2,862,370.14	2,494,652.89	3,464,755.07
Transportation	603,634.02	507,482.92	310,444.24	437,446.77	430,792.32
Environmental Services	202,234.74	234,748.81	208,804.91	206,075.28	250,814.30
General Services	454,077.68	345,651.21	86,635.92	127,608.46	86,918.32
Parks, Recreation and Neighborhood Services	320,300.97	154,569.22	143,335.77	172,284.49	287,754.93
Airport	141,623.94	149,615.94	272,524.60	171,737.60	153,303.48
Public Works	174,945.34	33,447.96	40,573.49	29,689.17	55,429.35
Planning/Building/Code Enforcement	144,639.58	8,056.21	21,319.82	48,332.27	32,132.05
City Manager	35,516.19	27,606.03	96,295.17	77,691.54	14,630.45
Finance	46,993.95	14,418.31	17,381.65	33,587.85	81,398.75
Convention, Arts and Entertainment	47,499.72	41,455.70	35,855.00	22,296.33	7,796.98
Library	5,450.21	20,974.06	53,113.34	14,355.67	41,445.92
Office of Economic Development	12,877.75	66,332.45	4,000.81	2,895.78	10,053.24
Information Technology	50,626.35	5,491.00	-	-	17,168.83
Human Resources	19,854.64	-	21,938.48	24,836.72	1,982.52
Housing	23,977.98	1,296.21	71.34	-	-
Clerk	-	3,436.82	1,287.33	66.79	-
Attorney	296.79	3,227.76	406.54	-	-
City Council	51.19	(51.19)	-	1,769.90	194.00
Retirement Services	341.88	526.67	440.16	-	-
Totals	**$8,156,659.56**	**$7,352,012.92**	**$7,196,196.08**	**$7,373,944.45**	**$8,958,066.60**

Source: Finance Department PeopleSoft Payroll System.

Clearly, part of the reason that San José's workers' compensation costs are high and recently trended higher is because of the high cost of disability leave. Some of the increase in the costs of temporary disability payments is due to State-mandated increases in weekly payment amounts to injured workers who are temporarily disabled and off work. Each employee that has a work-related illness or injury may receive a State-mandated payment, currently up to $958 per week, while out on disability leave. This benefit increased at an average annual rate of 10.4% in the last seven years.

Another reason for the City's higher costs can be attributed to the DLS that is also paid to City employees who are temporarily disabled and off work. The City's DLS payments are designed to bridge the gap between the temporary disability payments and the employee's regular salary while they are off work. The City provides compensation in the form of a DLS payment that bridges the gap between the temporary disability and 100 percent of their regular salary for 12 months for sworn employees and 85 percent of their regular salary for 9 months for non-sworn employees.

Between 2003-04 and 2007-08, the total amounts paid to employees while out on temporary disability leave in the form of the temporary disability payment and the DLS increased by $800,000. The Assistant Risk Manager, who manages the City's Workers' Compensation Program, attributed these higher costs to the fact that salaries were higher in 2007 than in 2003. That is, as City employees were awarded salary increases between 2003 and 2007, the cost of the DLS has also increased. For example, the San José Police Officers' Association negotiated a 5.7% salary increase for both 2006-07 and 2007-08. And, of course the higher the salary, the higher the amount that the City would be required to pay to the employee in the form of the DLS.

Other Jurisdictions Have a Less Generous Disability Leave Supplement or 4850 Benefit

California Workers' Compensation Law, Article 7, Section 4850 addresses paid leave of absence for specified public employees. According to the law, public employees who are members of the Public Employees Retirement System (PERS) are entitled to a disability leave of absence without loss of salary for up to one year. This benefit is commonly known as the 4850 benefit. Although the City has its own retirement systems and does not participate in PERS, City of San José union organizations have negotiated the provision of the 4850 benefit for the City's injured workers.

Other jurisdictions we surveyed have adopted a disability leave supplement that is not as generous as the City of San José. For example, according to the Risk Manager for the City and County of San Francisco, while the City and County of San Francisco pays 100 percent salary continuation for Police and Fire, there is no salary continuation at all for non-sworn

employees. They are allowed to use their own accrued time off to earn their full salary while on disability leave. According to the Executive Manager of Workers' Compensation, Santa Clara County provides 100 percent salary continuation for their Department of Corrections, Probation Officers, and Sheriffs for one year. All other county employees have what is called Workers' Compensation Integration. If they want to draw their full salary while on disability leave, they use their other personal leave balances to make up the difference between the State-mandated weekly amount and their full salaries. In San Diego, according to the Risk Manager, all city employees, not just Police and Fire, receive 100 percent of their pay when they are out on disability leave. However, San Diego pays disability leave at 100 percent of salary for only 90 working days of lost time for both sworn and non-sworn personnel. After 90 days, payments to equal employees' full salaries are discontinued and they may use personal leave balances to receive their full salaries. According to the City's Risk Management staff and other jurisdictions' risk managers we interviewed, the City's generous disability leave benefit may be a disincentive to return to work.

Increases in Disability Leave Hours

The other factor that has driven up the City's disability leave costs is the increase in the amount of time that employees stay off work. Recently, the City has experienced an increase in the total number of days injured employees are not at work. In 2006-07, City employees were off work for 213,000 hours. In 2007-08, the total time that injured employees were off work had grown to 248,000 hours. The bulk of the increased time off work belonged to the Police and Fire Departments. Specifically, Police Department personnel lost hours increased from 80,326 hours to 93,975 hours (17 percent higher) from 2006-07 to 2007-08 and Fire Department personnel lost hours increased from 75,672 hours to 95,198 hours (26 percent higher) for the same time period. This was roughly the equivalent of 45 FTEs in the Police Department and 33 FTEs in the Fire Department who were not available to perform their duties in 2007-08.

Obviously, the more time that employees are off work, the greater will be the amounts that the City must pay in temporary disability payments and DLS payments. Exhibit 15 below shows disability leave hours by department for FY 2003-04 through 2007-08.[3]

[3] These supplemental payments can last up to one year for sworn employees and nine months for non-sworn employees.

Exhibit 15: Disability Leave Hours by Department FY 2003-04 through 2007-08

	FY 03-04 Hours	FY 04-05 Hours	FY 05-06 Hours	FY 06-07 Hours	FY 07-08 Hours
Fire	81,348.9	77,038.8	87,654.4	75,671.5	95,197.7
Police	77,360.5	78,158.0	73,007.0	80,325.5	93,975.0
Transportation	26,842.0	21,334.0	13,210.0	18,450.0	17,040.5
Parks, Recreation and Neighborhood Services	11,811.0	7,992.5	7,177.5	7,856.5	12,083.0
General Services	20,664.5	14,985.5	3,168.0	3,607.5	3,100.5
Airport	6,908.0	7,216.5	13,009.9	8,764.5	7,851.5
Environmental Services	7,268.5	8,390.0	8,600.0	7,892.5	8,529.5
Public Works	6,334.0	1,057.0	1,347.0	970.5	1,878.0
City Manager	1,692.0	1,080.5	3,950.0	3,219.0	771.5
Planning/Building/Code Enforcement	5,025.5	254.0	956.0	2,055.5	1,002.5
Finance	2,066.0	583.5	857.0	1,722.0	3,867.0
Convention, Arts and Entertainment	2,169.5	2,097.5	1,897.5	1,076.0	260.5
Library	186.5	980.5	2,710.5	738.0	1,697.0
Office of Economic Development	591.0	2,383.0	188.0	150.0	372.0
Information Technology	1,841.0	200.0	-	-	797.0
Human Resources	808.0	-	547.5	719.5	66.0
Housing	1,088.0	63.5	2.5	-	-
Attorney	14.0	173.0	21.8	-	-
Clerk	-	135.5	50.0	2.5	-
City Council	2.0	(2.0)	-	65.5	7.0
Retirement Services	18.5	28.5	23.5	-	-
Totals	**254,039.4**	**224,149.8**	**218,378.0**	**213,286.5**	**248,496.2**

Source: Finance Department PeopleSoft Payroll System.

Exhibit 15 also illustrates major reductions in lost time over these five years in the Transportation (down 37 percent), Public Works (down 70 percent), and General Services (down 85 percent) Departments.

That the amount of time that injured police officers and firefighters stay away from work on disability has increased significantly is puzzling given the fact that both departments operate active workplace safety programs and that San José police officers and firefighters are filing fewer workers' compensation claims per 100 full-time employees than they have since at least 2003. In their 2007 risk assessment study, the City's outside consultant, ARM Tech, pointed out that the frequency with which

San José's police officers and firefighters filed workers' compensation claims was on the decline. So, although the City has fewer police officers and firefighters filing claims, those that do file claims are staying away from work longer.

The increasing amount of time that injured police officers and firefighters are staying away from work suggests several possibilities. First, it may be that police officers and firefighters are suffering more serious injuries than in past years and therefore need more time away from work to fully recover. Or, that injured police officers and firefighters have to wait longer than in past years to receive treatment and this causes a delay in their recovery and in their return to work. Another possible explanation is that treating physicians are simply allowing workers with minor injuries to stay away from work for longer periods of time. Clearly, it is in the City's interests to explore these questions further, so that underlying causes for the recent increases in the time that police officers and firefighters stay away from work on temporary disability can be addressed.

The City Auditor's 1994 *Audit Of The City Of San José Workers' Compensation Program* found that the DLS benefit was a contributing factor to the high use of disability leave. Our 1994 review found that there is an economic incentive for injured workers to remain off work and not return to modified duty positions. Specifically, because Title 26 of the Internal Revenue Code exempts the State-mandated portion of workers' compensation benefits from taxable gross income, employees' take-home pay actually increases while on disability leave.

Culture Change in Sunnyvale Helped Reduce the Number of Lost Work Days

The City of Sunnyvale has had some recent success in addressing the high cost of its Workers' Compensation Program through improvements designed to reduce the number of lost work days. In 2006, the City of Sunnyvale made many of the same improvements that San José has made, although Sunnyvale's reforms went further than San José's in addressing their high number of lost work days. First, Sunnyvale made improvements designed to ensure the prompt delivery of services to injured workers, such as promptly contacting the worker after the injury and promptly responding to requests for specialized medical treatments that require pre-approval. But, in addition to these improvements, Sunnyvale took specific steps to address the high amount of lost work days among their employees, particularly their public safety employees, by communicating more frequently with injured workers who are off work and by focusing more management attention on reducing the time lost to workplace injuries.

Furthermore, in Sunnyvale's Public Safety Department, the Chief has made it clear to his employees that he expects injured workers to return to work in their regular job or in a modified duty job as soon as their medical conditions permit them to do so.

Sunnyvale began tracking workers' compensation lost work days in 2002-03 and set performance goals for each department to reduce the number of lost work days by 5 percent from the previous fiscal year. After Sunnyvale took these steps to address its high amount of lost work time, from 2006-07 to 2007-08, the number of lost work days among all City employees dropped 38 percent and dropped 57 percent among Sunnyvale's public safety employees.

To better control the days lost to workers off on disability, the City must redouble its efforts to get employees to return to work as soon as they are medically able. For this reason, we make the following recommendations.

We recommend that the City Manager:

Recommendation #1

Propose structural changes to the City's Workers' Compensation Program that would include (1) reducing the City's policy of providing up to nine months of a disability leave supplement pay at 85 percent for non-sworn and one full year at 100 percent for sworn employees and (2) implementing a retirement benefit payment offset for sworn employees receiving disability retirement payments that replicates the offset for retired non-sworn employees. (Priority 2)

We recommend that Risk Management:

Recommendation #2

Assign to the City's Return-To Work-Coordinator the responsibility for identifying for each of the departments, with the highest frequency of workers' compensation claims, the number of lost work hours attributable to employees off work due to a workplace injury. Each month, this report shall be made available to the City Manager and to each department director to facilitate the department directors' efforts to have the injured employees return to work as soon as the workers' medical conditions allow. (Priority 3)

We also recommend that in the San José Police and Fire Departments:

Recommendation #3

The Police Chief and the Fire Chief work with Risk Management to identify the reasons for the recent significant increase in the time away from work among their injured police officers and firefighters, so that they may be in a better position to address the escalating cost of disability leave payments in their departments. (Priority 3)

Loss of Productive Work Time and Potential Overtime Costs Necessitate Additional Follow-up in the Fire Department

Another cost associated with City workers out on disability leave is the cost to the City of filling in for the workers who are off of work. This cost is particularly visible in the City's Police and Fire Departments, which accounted for almost 80 percent of the total hours that injured City employees were off work in 2007-08.

In the Fire Department, minimum staffing levels are mandated and the City must find a replacement for workers off of work on temporary disability. For example, in fiscal year 2007-08, the Fire Department paid temporary disability leave of about $3.5 million for over 95,000 hours where firefighters were off on temporary disability leave. To provide perspective, 95,000 hours is roughly the equivalent of 33 firefighters being away from work for one year each. For many, if not all, of the shifts not worked by these 33 firefighters, the City must find another firefighter to work the shift. This frequently means bringing someone in on overtime and paying an overtime premium to the replacement firefighter. In 2007-08, the Fire Department allocated about $8.5 million of their overtime budget to meet daily minimum staffing requirements. According to a 2007 report by the City's Risk Manager, about 40 percent of the Fire Department's overtime expense was the expense of replacing firefighters who were off of work while on disability leave.

In the City's 1998-99 Adopted Operating Budget, the City Council approved the continuation of the Fire Department's Wellness Program for a second year. According to the Fire Chief, an important component of the program was the Wellness Coordinator. A civilian filled this position and was able to investigate each claim, personally follow up with each injured worker about the circumstances surrounding the injury, and provide instruction on how to rehabilitate the injury and return to work more quickly. However, several years later in the budget reductions of 2002-03, the Wellness Coordinator position was eliminated. The Fire Department still has a Wellness Program but it is limited to maintaining equipment and

wellness assessments an outside contractor provides. Given the nearly $3.5 million the Fire Department spent in 2007-08 for disability leave payments for injured firefighters, we believe it is time for the City to once again consider the cost benefit of restoring the Wellness Coordinator position for the Fire Department's Wellness Program.

Further, in a 2001 audit report, we addressed the Fire Department's spending on overtime to cover firefighter absences, most of which were due to disability leave. At that time (1999-00), the Fire Department spent $3.2 million on overtime to fill in for firefighters out on disability leave or working modified duty. As part of that review, we contacted other jurisdictions and found that exploring the feasibility of a wellness-fitness program for San José was worthwhile. Our research found that during the eight-year life of the wellness-fitness program in Phoenix, Arizona, the fire department experienced a 26 percent reduction in work-related injuries. The City of Seattle experienced a similar outcome after putting in place a wellness-fitness program for their firefighters. Since reducing workplace injuries is in everyone's best interest, we recommended that the San José Fire Department *"Evaluate the feasibility of implementing a comprehensive wellness-fitness program for the SJFD and prepare a budget proposal should the initiative appear cost-beneficial."*

The 2001 report also cited research studies over the prior 15 years that had shown a return on investment of 6.2 to 1 from having a wellness-fitness program in place. According to the Fire Chief, restoring the Wellness Coordinator position would further enhance this return on investment by returning firefighters back to work sooner and, as a result, reduce the department's disability leave and overtime costs.

We recommend that the City Administration and the Fire Department:

Recommendation #4

Reconsider the feasibility of restoring the Wellness Coordinator position for the Wellness Program and implementing a comprehensive Wellness-Fitness Program for the Fire Department. (Priority 3)

In Spite of Recent Efforts to Curb Lost Work Days More Action Must Be Taken

In the past several years, the City has made a number of improvements aimed at creating a safe workplace for employees and minimizing liability to the City. In 2007, the City centralized Risk Management into the Human Resources Department and hired a Citywide Safety Officer, a Risk Manager, and two full-time risk control employees. Also, in 2008, the City took steps to address the under-staffing in its Workers' Compensation Unit

by hiring five more adjusters who are directly involved in managing the claims of injured workers. In addition, the City re-established the position of the Return-To-Work Coordinator, who assists workers who have been injured and off work to return to work as soon as their medical conditions permit them to do so.

We selected a sample of 15 workers' compensation claims to determine whether workers' compensation claims adjusters' initial contact with injured workers was timely. Based on the results of our analysis, it appears that the City's improvements have paid off in terms of the Workers' Compensation Unit's providing prompt attention to the needs of injured workers. Specifically, for 11 of 15 claims that we reviewed, the workers' compensation claims adjuster made initial contact with the injured worker either on the same day they received the claim or within 24 hours of receipt. In one other case, contact was made within 48 hours. In two of the three exceptions we noted, workers' compensation claims adjusters were not notified timely of the claims. In only one case was there significant delay in contacting the injured worker and there was evidence that a supervisor discussed this situation with the workers' compensation claims adjuster.

In addition, we reviewed 20 claims where a physician requested a medical procedure that required special authorization by the City and found that the City responded in an average of 1.6 days to initiate treatment for these injured workers.

However, the City could do even more to contain the frequency and the cost of workers' compensation claims. To cut down the frequency of claims, the City's employees and managers have put a greater priority on the City's Eight-Point Safety Program. The Eight-Point Safety Program involves a self-analysis by each department on how well they are doing against the Eight-Points. The Eight-Points are:

- Management Leading and Promoting Safety
- Accountability for Safety
- Safety As An Element of Performance Appraisal
- Establishing Safety Goals for Each Unit
- Safety Training
- An Effective Safety Committee (Network)
- Hazard Identification and Elimination
- Investigate All Injury and Accidents

Each department with a high number of claims has been given a claims reduction target determined by an annual actuarial study. Departments participating in the Eight-Point Safety Program and meeting their claims reduction targets may participate in the Gain Sharing Program. In 2007-08, the Budget Office established a fund in the amount of $500,000 for the Gain Sharing Program. Departments propose uses of the Gain Sharing money for safety-related purposes, i.e., a wellness program or workout equipment. A committee has been formed that decides which department has the best proposal and deserves the money to implement it. In 2007, DOT, GSA, Fire, and Police were eligible for Gain Sharing funds; $450,000 was awarded to these departments to implement proposals such as purchasing ergonomic equipment, body mechanics training and strength training equipment, and performing an asbestos survey.

Making department managers more accountable for meeting their safety goals is one idea that has already been put forward but was never implemented. In 2007, an outside consultant, ARM Tech, made an important recommendation that the City has not implemented which would have made department managers more accountable for meeting their own safety goals. The consultant also recommended that the accomplishment of safety goals be a factor in the review of each department's annual performance.

We recommend that the City Administration:

Recommendation #5

Implement the 2007 consultant recommendation to include the accomplishment of safety goals as one of the goals to be considered in the City's performance review process in which the City Council reviews each department's performance during the budget study sessions each spring. (Priority 3)

Establishing Departmental Accountability for Workers' Compensation Costs

The ARM Tech consultant made another recommendation designed to make department managers more accountable for workers' compensation costs in their own departments by allocating all workers' compensation costs to individual departments. Allocating each department's workers' compensation expenses to the department's budget is a recommendation that the City is reconsidering. Such a strategy would focus more attention on the high cost of workers' compensation. During FY 2007-08, Risk Management initiated discussions with the City Manager's Budget Office about the feasibility of allocating all workers' compensation costs among

City departments. Currently, City departments only pay for a portion of workers' compensation from their budgets, specifically, the cost of temporary disability and the DLS.

We agree that fully allocating workers' compensation costs to City departments is worth a try. In fact, five of nine other cities we surveyed directly allocate workers' compensation costs to city departments. And, two of the others are planning on doing so in fiscal year 2009-10. Exhibit 16 below shows the other jurisdictions in California currently allocating or planning to allocate Workers' Compensation Program costs directly to city departments.

Exhibit 16: California Jurisdictions Currently Allocating or Planning to Allocate Workers' Compensation Program Costs Directly to Departments

Jurisdiction	Cost Allocation
Bakersfield	YES
City/County SF	YES
Los Angeles	NO
Fresno	YES
Sacramento	NO but proposed for their 2009-10 budget year
Long Beach	YES
Santa Ana	NO but proposed for their 2009-10 budget year
San Diego	YES
Riverside	NO

Several of the risk managers we interviewed, stated that when city departments were required to include an amount for workers' compensation in their department budgets it heightened their awareness of the cost of care for injured workers and promoted more department-level accountability for the number of claims that were filed.

We recommend that Risk Management and the City Manager's Budget Office:

Recommendation #6

For the City Departments whose employees file most of the City's workers' compensation claims, establish a line item in each department's operating budget that would cover the department's projected workers' compensation costs. Departments that spend more than they have available in their departmental budget would have to approach the City Council for a budget augmentation. (Priority 3)

Higher Visibility to Reporting of Workers' Compensation Program Costs

The City's highly expensive Workers' Compensation Program also warrants more frequent vigilance by the City Manager and by the City Council. Currently, Risk Management reports annually to the City's Risk Management Planning Board (RMPB) on its success in controlling the cost of the City's Workers' Compensation Program. In fact, for fiscal year 2008-09, Risk Management's goal is to decrease the number of workers' compensation claims per 100 full-time employees by 5 percent.

In September 2008, Risk Management presented its first annual report on how the City is doing in managing various risks, including workers' compensation, to the RMPB. The report presented five years of data on the City's costs, but for all five years the report overstated the amount that the City had spent on workers' compensation because temporary disability payments were double-counted. For example, the report showed that the City had spent $31 million for workers' compensation in fiscal year 2007-08, when the City actually spent $24.3 million. After we pointed out the errors, Risk Management took steps to correct the erroneous report. Risk Management has corrected the report and re-submitted it to the RMPB.

Regular reporting is such an important tool in controlling the City's costs that we believe this report should be made more frequently. The City Manager's Budget Office presents a bi-monthly financial update to the City Council's Public Safety, Finance, and Strategic Support Committee. This report provides the City Council a year-to-date snapshot of the City's fiscal health, comparing revenues and spending against budget projections. It includes information regarding overtime costs, but does not address workers' compensation costs. In our opinion, the City Council and the City Manager should also receive regular reports on the cost trends of the City's Workers' Compensation Program.

We recommend that Risk Management:

Recommendation #7

Prepare a quarterly report to the Public Safety, Finance, and Strategic Support Committee that covers the City's Workers' Compensation Program. This report should identify (1) workers' compensation claims costs for each of the City departments who have the highest frequency of workers' compensation claims, (2) total costs compared to the budgeted costs for each department, and (3) significant components of cost (e.g., the cost for medical treatments, payments of temporary disability, payments of disability leave supplements, and/or payments for permanent disabilities). Risk Management should also make this report available to each of the department directors, whose departments account for the bulk of the City's claims, as a way to closely monitor the City's overall and departmental costs of workers' compensation. (Priority 3)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Sharon Erikson
City Auditor

FROM: Mark Danaj

SUBJECT: RESPONSE TO AUDIT OF THE CITY OF SAN JOSÉ'S WORKERS' COMPENSATION PROGRAM

DATE: April 7, 2009

Approved Danielle Antuna Date 4/7/09

The Human Resources Department has reviewed the final draft report of *An Audit of the City of San José's Workers' Compensation Program* and agrees with the findings and recommendations of the report. The following is the Administration's response to each recommendation.

BACKGROUND

The Human Resources Department has worked closely with the City Auditor's Office over the past several years to analyze workers' compensation claims and costs. This Audit correctly identifies that workers' compensation claims and the City's payments for medical, indemnity, and legal costs of claims have decreased in each of the last three fiscal years. It also correctly identifies that the City's costs and claims are high in comparison to other cities and that disability leave costs associated with claims increased significantly in fiscal year 2007-2008.

Many of the factors driving high disability costs identified by the Auditor's Office are structural. The City's disability leave supplement, disability retirement benefits, the rising cost of medical care, and changes to workers' compensation law all greatly impact workers' compensation costs. These structural benefits and policies are generally negotiated or set by elected and appointed officials and are outside of the scope of the Administration's direct management authority. As a result, the Administration has determined that its efforts to control costs and claims are most effectively directed toward proactive illness and accident prevention. By creating a safe and healthy work place, the Administration can intervene before structural, predetermined cost drivers are activated.

RECOMMENDATIONS AND RESPONSE

Recommendation #1: Propose structural changes to the City's Workers' Compensation program that would include (1) reducing the City's policy of providing up to nine months

of a disability leave supplement pay at 85 percent for non-sworn and one full year at 100 percent for sworn employees, and (2) implementing a retirement benefit payment offset for sworn employees receiving disability retirement payments that replicates the offset for retired non-sworn employees. (Priority 2)

Administration Response: Agree. The Administration will propose structural changes to the agreements which govern the City's Workers' Compensation program (as outlined in this recommendation) via the collective bargaining process. The proposals will be made and their merits will be evaluated within the context of the City's overall negotiating strategy.

Recommendation #2: Assign to the City's Return-To-Work Coordinator the responsibility for identifying for each of the departments, with the highest frequency of workers' compensation claims, the number of lost work hours attributable to employees off work due to a workplace injury. Each month, this report shall be made available to the City Manager and to each department director to facilitate the department directors' efforts to have the injured employees return to work as soon as the workers' medical conditions allow. (Priority 3)

Administration Response: Agree. Under the Return-To-Work Coordinator's direction, Risk Management staff currently produces a bi-weekly report detailing disability hours used by employees in each of the City's large departments. Risk Management will make the report available to Department Directors and the City Manager on a monthly basis.

Recommendation #3: The Police Chief and the Fire Chief work with Risk Management to identify the reasons for the recent significant increase in the time away from work among their injured police officers and firefighters, so that they may be in a better position to address the escalating cost of disability leave payments in their departments. (Priority 3)

Administration Response: Agree. Risk Management, in conjunction with the Office of the City Manager, will identify specific disability leave cost drivers to review with the Police and Fire Chiefs and will assist both departments in identifying strategies to address high disability leave usage. Risk Management will also continue to conduct Disability Management Team meetings on a monthly basis with each of the City's six largest departments. These meetings are attended by Police and Fire Department management staff and serve as a forum to review employee disability leave usage. The meetings are also sometimes used to formulate leave management and return to work strategies when such issues fall within the scope of the Department's authority to manage. Leave rules and incentives are structural in nature and often cannot be addressed directly by the Administration.

Recommendation #4: Reconsider the feasibility of restoring the Wellness Coordinator position for the Wellness Program and implementing a comprehensive Wellness-Fitness Program for the Fire Department. (Priority 3)

Administration Response: Agree. The Administration acknowledges the benefits of a Wellness Coordinator; however, this recommendation needs to be evaluated in the greater context of the City's current fiscal environment. While efforts will begin by Risk Management to work with the Fire Department to determine if there is an option to restore a full time wellness coordinator at a "net zero" impact to the budget, agreement with this audit recommendation must consider the difficult policy and service delivery choices that the City will be making during review/adoption of the FY 2009-2010 operating budget. The City Council's acceptance of this recommendation should be revisited during a future Semi-Annual Audit Recommendation review to determine if implementation of this recommendation is feasible within current fiscal constraints; concurrently, the City will explore alternative approaches to achieving the recommendation if a "net zero" budget proposal is not achievable.

Recommendation #5: Implement the 2007 consultant recommendation to include the accomplishment of safety goals as one of the goals to be considered in the City's performance review process in which the City Council reviews each department's performance during the budget study sessions each spring. (Priority 3)

Administration Response: Agree. The Administration will work with departments to include safety goals, as outlined by the Eight-Point Safety Program Assessment, in the performance measures review process completed annually during the budget study sessions. The Administration will emphasize use of and adherence to the Eight-Point Safety Program assessment tool (see attachment) which requires departments to maintain records of all accident and injury investigations as well as the associated disciplinary actions.

Recommendation #6: For the City Departments whose employees file most of the City's workers' compensation claims, establish a line item in each department's operating budget that would cover the department's projected workers' compensation costs. Departments that spend more than they have available in their departmental budget would have to approach the City Council for a budget augmentation. (Priority 3)

Administration Response: Agree. As a pilot project, in FY 2009-2010 the Administration is planning to divide the Citywide workers' compensation appropriation into six areas and assign them to Police, Fire, General Services, Parks Recreation and Neighborhood Services Departments, Department of Transportation, and other Departments as a way to keep track of expenditures at the departmental level. If Departments exceed their appropriation, Department Heads will have to justify their expenses directly to the Office of the City Manager. An evaluation will be conducted at the end of the pilot project (approximately one to two years in duration) to determine impact on costs and claims before proceeding further.

Recommendation #7: Prepare a quarterly report to the Public Safety, Finance, and Strategic Support Committee that covers the City's Workers' Compensation Program. This report should identify (1) workers' compensation claims costs for each of the City departments who have the highest frequency of workers' compensation claims, (2) total costs compared to the budgeted costs for each department, and (3) significant components

of cost (e.g., the cost for medical treatments, payments of temporary disability, payments of disability leave supplements, and/or payments for permanent disabilities). Risk Management should also make this report available to each of the department directors, whose departments account for the bulk of the City's claims, as a way to closely monitor the City's overall and departmental costs of workers' compensation. (Priority 3)

Administration Response: Agree. Risk Management will report all of the recommended claims and cost information on a quarterly basis to the Public Safety, Finance, and Strategic Support Committee and department directors for review. Staff will amend the Risk Management Annual and Semi-Annual reports, which already report most of the information outlined in recommendation # 6, to include the additional recommended information.

CONCLUSION

This Audit makes valid recommendations for revising and improving the processes by which the City proactively manages workers' compensation costs and claims. The Administration will take decisive action to address the recommendations. The Administration thanks the City Auditor and her staff for the hard work and thoughtful analysis that went into the Audit.

COORDINATION

This memorandum has been coordinated with the Police and Fire Departments.

Mark Danaj

MARK DANAJ
Director, Human Resources

For questions please contact John Dam, Deputy Director of Human Resources/Risk Manager at (408) 975-1438.

Attachment

INTRODUCTION

The 8 Point Guideline Document is designed to provide departments with the framework upon which to build and maintain the safety program best suited to their work. This guide is based on several best practice safety programs and is endorsed by the City's Risk Management Planning Board.

Several studies, sponsored by the National Safety Council, and other organizations, such as the Conference Board, Liberty Mutual (one of the largest workers' compensation insurance companies in the country) have identified management leadership to create a culture of accountability for safety as the key to a safe and healthy workplace.

> *"When safety is part of an organization's culture, safety and health takes on a far more meaningful position than merely a priority or a program of improvement. When companies make safety a value, they strive for perfection, set their goals at zero injuries and manage accordingly."*[1]

> *"Our long-standing obsession with safety has resulted in some of the most innovative and cost-savings approaches. Setting higher goals and raising loss-prevention at the highest levels go to show that a little obsession with safety can be a beautiful thing. Not mention a profitable one."*[2]

> *"Companies striving for outstanding safety and health records are not only ensuring strict regulatory compliance, they are developing best practices to enhance their performance. The primary drivers appear to be a strong conviction that accidents and injuries are unacceptable in their operations and a firm belief that business benefits through improved moral and increased productivity."*[3]

This guide is comprised of the best practices and methods that are vital to the creation of a successful safety culture including management promotion and ownership of safety, comprehensive training, investigation, accountability, and shared information. Taken in the aggregate, the 8 Point Proactive Safety Guide suggests a comprehensive program for preventing illness and injury and serves as the basis for the City's safety rating assessment tool.

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[1] National Safety Council, "Commitment to Safety, CEOs Who Get It.", Vol. 167, No. 2
[2] Liberty Mutual, "There's no such thing as a workplace that's too safe." 2002
[3] The Conference Board, "Driving Toward'0', How Leading Companies Develop Safety Cultures." R-1334-03-RR

City of San Jose
8 Point Guidelines
PROACTIVE SAFETY PROGRAM SUMMARY

1.0 Management Leading and Promoting Safety

- Management should foster open communication with and feedback from employees in which accidents, near misses, and unsafe behavior can be discussed and corrected.
- Placing safety on the department / division staff meeting agendas
- Noticing unsafe behaviors and correct them immediately

2.0 Accountability for Safety: Hold everyone in the department accountable for safety and follow the performance management process for dealing with violations of safety rules.

3.0 Safety as an Element of Performance Appraisal: This "Safety" Key Element includes the following:

- Safety should be an important part of all appropriate supervisors' performance appraisals.
- Management should review safety goals with supervisors at least each quarter.
- Supervisors are responsible for ensuring that all accidents and injuries in their work group are properly investigated.
- Supervisors ensure that their employees attend safety related training and track attendance.
- Supervisors hold employees accountable for violations of safety rules and policies (independently of injuries that may have resulted from those violations).

4.0 Establishing Safety Goals: Identify quantifiable safety goals and track them.

5.0 Safety Training: Require employees to attend safety training appropriate to their job tasks.

6.0 An Effective Safety Committee (Network): Establish an appropriate Safety Committee (if one does not exist) to resolve common safety issues in the department.

7.0 Hazard Identification and Elimination: Identify hazards in the operation of the department and eliminate them before they cause accidents and injuries.

8.0 Investigate All Injury and Accidents: Investigate all injuries and accidents and follow-up on corrective or preventive actions.

APPENDIX A

DEFINITIONS OF PRIORITY 1, 2, AND 3 AUDIT RECOMMENDATIONS

The City of San Jose's City Policy Manual (6.1.2) defines the classification scheme applicable to audit recommendations and the appropriate corrective actions as follows:

Priority Class[1]	Description	Implementation Category	Implementation Action[3]
1	Fraud or serious violations are being committed, significant fiscal or equivalent non-fiscal losses are occurring.[2]	Priority	Immediate
2	A potential for incurring significant fiscal or equivalent fiscal or equivalent non-fiscal losses exists.[2]	Priority	Within 60 days
3	Operation or administrative process will be improved.	General	60 days to one year

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1 The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number.

2 For an audit recommendation to be considered related to a significant fiscal loss, it will usually be necessary for an actual loss of $50,000 or more to be involved or for a potential loss (including unrealized revenue increases) of $100,000 to be involved. Equivalent non-fiscal losses would include, but not be limited to, omission or commission of acts by or on behalf of the City which would be likely to expose the City to adverse criticism in the eyes of its citizens.

3 The implementation time frame indicated for each priority class is intended as a guideline for establishing implementation target dates. While prioritizing recommendations is the responsibility of the City Auditor, determining implementation dates is the responsibility of the City Administration.